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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO,
individually and on behalf of themselves and
all others similarly situated,

Plaintiff,

vs.

GOOGLE LLC,

Defendant.

Case No. 4:20-cv-03664-YGR-SVK

**JOINT SUBMISSION RE: SEALING
PORTIONS OF THE JANUARY 17, 2023
ORDER ON (1) GOOGLE'S MOTION FOR
RELIEF REGARDING PRESERVATION,
AND (2) PARTIES' JOINT SUBMISSION
RE PRESERVATION IN LIGHT OF
CLASS CERTIFICATION ORDER (DKT.
830)**

Judge: Hon. Susan van Keulen

1 January 24, 2023

2 Submitted via ECF

3 Magistrate Judge Susan van Keulen
4 San Jose Courthouse
5 Courtroom 6 - 4th Floor
6 280 South 1st Street
7 San Jose, CA 95113

8 Re: Joint Submission re: Sealing Portions of the January 17, 2023 Order on (1)
9 Google's Motion for Relief Regarding Preservation, and (2) Parties' Joint
10 Submission re Preservation in Light of Class Certification Order
11 *Brown v. Google LLC*, Case No. 4:20-cv-03664-LHK-SVK (N.D. Cal.)

12 Dear Magistrate Judge van Keulen:

13 Pursuant to Your Honor's January 17, 2023 Redaction Order (Dkt. 831), Plaintiffs and
14 Google LLC ("Google") hereby jointly propose redactions to the Court's January 17, 2023 sealed
15 Order on (1) Google's Motion for Relief Regarding Preservation, and (2) Parties' Joint
16 Submission re: Preservation in Light of Class Certification Order (Dkt. 830).
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I. INTRODUCTION

As ordered by the Court on January 17, 2022 (*see* Dkt. No. 831), Google and Plaintiffs jointly propose redactions to the Court’s January 17, 2022 Sealed Order regarding Google’s request to be relieved from its ongoing preservation obligations (Dkt. No. 830) (“Order”). Google contends that the material proposed for redaction contains Google’s confidential and proprietary information regarding highly sensitive features of Google’s internal systems and operations that Google does not share publicly, including various types of Google’s internal projects and metrics, that Google maintains as confidential in the ordinary course of its business and is not generally known to the public or Google’s competitors. This information is highly confidential and should be protected.

This Administrative Motion pertains to the following information contained in the Order:

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality
January 17, 2023 Order on (1) Google’s Motion for Relief Regarding Preservation, and (2) Parties’ Joint Submission re: Preservation in Light of Class Certification Order	Highlighted portions at: Page 1:15	Google

The parties conferred on the proposed redactions to the Order. Plaintiffs do not oppose sealing the proposed redactions and thus today’s submission is presented jointly.

II. LEGAL STANDARD

The common law right of public access to judicial records in a civil case is not a constitutional right and it is “not absolute.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978) (noting that the “right to inspect and copy judicial records is not absolute” and that “courts have refused to permit their files to serve as reservoirs of . . . sources of business information that might harm a litigant’s competitive standing”). Sealing is appropriate when the information at issue constitutes “competitively sensitive information,” such as “confidential research, development, or commercial information.” *France Telecom S.A. v. Marvell Semiconductor Inc.*, 2014 WL 4965995, at *4 (N.D. Cal. Oct. 3, 2014); *see also Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (acknowledging courts’ “broad latitude” to “prevent disclosure of

1 materials for many types of information, including, but not limited to, trade secrets or other
2 confidential research, development, or commercial information”).

3 **III. THE ABOVE IDENTIFIED MATERIALS EASILY MEET THE “GOOD CAUSE”**
4 **STANDARD AND SHOULD ALL BE SEALED**

5 Courts have repeatedly found it appropriate to seal documents that contain “business
6 information that might harm a litigant’s competitive standing.” *Nixon*, 435 U.S. at 589-99. Good
7 cause to seal is shown when a party seeks to seal materials that “contain[] confidential information
8 about the operation of [the party’s] products and that public disclosure could harm [the party] by
9 disclosing confidential technical information.” *Digital Reg. of Texas, LLC v. Adobe Sys., Inc.*, 2014
10 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Materials that could harm a litigant’s competitive
11 standing may be sealed even under the “compelling reasons” standard. *See e.g., Icon-IP Pty Ltd. v.*
12 *Specialized Bicycle Components, Inc.*, 2015 WL 984121, at *2 (N.D. Cal. Mar. 4, 2015)
13 (information “is appropriately sealable under the ‘compelling reasons’ standard where that
14 information could be used to the company’s competitive disadvantage”) (citation omitted).

15 Here, the Order comprises confidential information regarding highly sensitive features of
16 Google’s internal systems and operations that Google does not share publicly. Specifically, this
17 information provides details related to various types of Google’s internal projects and metrics. Such
18 information reveals Google’s internal strategies, system designs, and business practices for
19 operating and maintaining many of its important services while complying with legal and privacy
20 obligations.

21 Public disclosure of the above-listed information would harm Google’s competitive standing
22 it has earned through years of innovation and careful deliberation, by revealing sensitive aspects of
23 Google’s proprietary systems, strategies, designs, and practices to Google’s competitors. That alone
24 is a proper basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No.
25 14-cv-02329-BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal
26 certain sensitive business information related to Google’s processes and policies to ensure the
27 integrity and security of a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*,
28 No. 3:16-cv-02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales

1 data because “disclosure would harm their competitive standing by giving competitors insight they
 2 do not have”); *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8,
 3 2013) (granting motion to seal as to “internal research results that disclose statistical coding that is
 4 not publically available”).

5 Moreover, if publicly disclosed, malicious actors may use such information to seek to
 6 compromise Google’s internal systems and data structures. Google would be placed at an increased
 7 risk of cyber security threats, and data related to its users could similarly be at risk. *See, e.g., In re*
 8 *Google Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D. Cal. Sept. 25, 2013) (sealing “material
 9 concern[ing] how users’ interactions with the Gmail system affects how messages are transmitted”
 10 because if made public, it “could lead to a breach in the security of the Gmail system”). The security
 11 threat is an additional reason for this Court to seal the identified information.

12 The information Google seeks to redact is the minimal amount of information needed to
 13 protect its internal systems and operations from being exposed to not only its competitors but also
 14 to nefarious actors who may improperly seek access to and disrupt these systems and operations.
 15 The “good cause” rather than the “compelling reasons” standard should apply but under either
 16 standard, Google’s sealing request is warranted.

17 **IV. CONCLUSION**

18 For the foregoing reasons, Google respectfully requests that the Court seal the identified
 19 portions of the Order. Plaintiffs do not oppose.

20
 21 Respectfully submitted,

22
 23 /s/ Andrew H. Schapiro

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ATTESTATION OF CONCURRENCE

I am the ECF user whose ID and password are being used to file this Joint Submission.
Pursuant to Civil L.R. 5-1(h)(3), I hereby attest that each of the signatories identified above has
concurred in the filing of this document.

Dated: January 24, 2023

By /s/ Andrew H. Schapiro
Andrew H. Schapiro
Counsel on behalf of Google LLC